

**REMARKS**

This paper is responsive to the final Office action dated November 19, 2008 (the “Office Action”).

Claims 1-117, 119, 122, and 124-127 are pending. Claim 121 has been canceled in this paper.

Claims 1-7, 14, 16-17, 29-35, 42, 44-45, 57-63, 70, 72-73, 85-91, 98, 100-101, 114-117, 119, and 124-127 stand rejected.

Claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99, 102-112, and 122 are under objection.

Claim 113 has been allowed.

The amendments add no new matter. Support for the amendments may be found throughout Applicant’s Specification and Drawings as originally filed, for example on pp. 9-11 and in original claim 10. While not conceding that the cited reference(s) qualify as prior art, but instead to expedite prosecution, Applicant has chosen to respond as follows. Applicant reserves the right, for example in a continuing application, to establish that the cited reference(s), or other references cited thus far or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicant respectfully submits that the pending claims are allowable in view of the following remarks and the above amendments, and respectfully requests reconsideration of the pending rejections.

**Allowable Subject Matter**

Applicant expresses continued gratitude for the indication that objected claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99, 102-112, and 121-122 would be allowable if rewritten in independent form including all the limitations of the respective base claims and any intervening claims. Applicant wishes to maintain these claims in dependent form in view of the following remarks regarding the allowability of the respective base claims.

Applicant expresses gratitude for the indication that claim 113 is allowed.

**Rejection of Claims under 35 U.S.C. § 103**

Claims 1-3, 29-31, 57-59, 85-87, 114-117, 119, 124, and 127 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,282,170 issued to Bentall et al. (“Bentall”), in view of U.S. Patent No. 6,577,595 issued to Counterman (“Counterman”). Claims 4-7, 14, 16, 32-35, 42, 44, 60-63, 70, 72, 88-91, 98, and 100 stand rejected under § 103(a) as being unpatentable over Bentall in view of Counterman, and further in view of U.S. Patent No. 6,728,205 issued to Finn, et al. (“Finn”). Claims 17, 45, 73, and 101 stand rejected under § 103(a) as being unpatentable over Bentall and Counterman in view of Finn and further in view of U.S. Patent No. 6,430,150 issued to Azuma, et al. (“Azuma”). Claim 125 stands rejected under § 103(a) as being unpatentable over Bentall in view of Counterman and U.S. Patent No. 5,130,974 issued to Kawamura et al. (“Kawamura”). Claim 126 stands rejected under § 103(a) as being unpatentable over Bentall in view of Counterman and Kawamura, and further in view of U.S. Patent No. 4,287,592 issued to Paulish, et al. (“Paulish”).

Applicant respectfully submits that the claims are allowable under § 103(a) because a person having ordinary skill in the art would not make the proposed combination of references,

and because the cited portions of the references fail to disclose each limitation of Applicant's claims.

**1. The cited passages fail to disclose Applicant's receiving of information "from a candidate node."**

Applicant's claim 1 includes receiving information from a candidate node, with the information indicating that the candidate node has sufficient resources to support a virtual path. Applicant's independent claim 29 includes a processor in a candidate node. The processor in the candidate node is configured to determine whether the candidate node has sufficient resources to support a virtual path. These limitations, among others, are not disclosed in the cited portions of the references.

With regard to these limitations, the Office Action turns to Counterman. The cited passages of Counterman describe a "network management system" (also called a "network resource management system") that analyzes the traffic on a network to determine if the network has sufficient resources to support this new connection. See, Counterman, 2:32-48. The network resource management system accepts a user's connection request only if the network resource management system determines that such sufficient resources are available. See, *id.*

Counterman's determination of whether sufficient resources are available is thus made by the network resource management system. However, the cited passages fail to teach that such information is received from a candidate node, as would be required (among others) to meet the limitations of Applicant's independent claim 1. The cited passages also fail to teach that a processor in a candidate node is configured to determine whether the candidate node has

sufficient resources to support a virtual path, as would be required (among others) to meet the limitations of Applicant's independent claim 29.

To the contrary, Counterman teaches that its network management system "may be a software program or tool that manages the environment of the network." *See, id.* at 6:36-39 (emphasis added). The network management system assesses the links between a plurality of nodes. *See, Counterman*, 7:43-47. Counterman's network management system operates on a network as a whole, since it "manages the environment of the network." *See, id.* at 6:36-39. A person having ordinary skill in the art would readily understand that such a management system is an overarching tool, and is certainly not any single node in a network. In particular, the cited passages fail to teach that Counterman's network management system is a candidate node, and certainly fail to teach that that Applicant's "information indicating that said candidate node has sufficient resources to support said virtual path" is received from a candidate node, or that a processor in a candidate node is configured to make a determination regarding sufficient resources.

Moreover, these limitations are also absent from Bentall, as the Office Action correctly notes. *See, Office Action*, p. 3, lines 4-6. The cited passages of Finn, Azuma, Kawamura, and Paulish do not remedy these shortcomings.

Accordingly, the cited passages fail to disclose the limitation of "receiving, from a candidate node, information indicating that said candidate node has sufficient resources to support said virtual path." At least for this reason, independent claim 1 and all claims dependent therefrom are allowable under § 103(a). At least for similar reasons, independent claims 29, 57, and 85 and all claims dependent therefrom are also allowable under § 103(a).

**2. The teachings of Bentall militate against the Examiner's proposed modification with the teachings of Counterman.**

Bentall purportedly describes techniques for selecting alternative routes in a network. See, e.g., Bentall, 5:46-6:9. Bentall purports to use a “chooser node” for controlling the allocation of spare capacity on a selected alternative route. See, *id.* at 6:1-4. Bentall emphasizes the advantage of this approach over other techniques:

Finally, at step 114, one or more of the alternative routes is selected, and allocation of the spare capacity on this selected alternative route is controlled by the chooser node 64. In comparison with the prior art method of FIG. 1, there is locally centralised control of the allocation of the spare capacity on the allocation of the spare capacity on the alternative routes by the chooser node, which enables more efficient allocation, and avoids blocking caused by temporary allocation by tandem nodes.

Bentall, 6:1-9 (emphasis added). Bentall thus advocates the use of chooser node 64 to enable more efficient allocation and to avoid blocking caused by temporary allocation by tandem nodes.

The Examiner's proposed modification of Bentall with Counterman would eviscerate these advantages. In the Examiner's modification, instead of using chooser node 64, Bentall would somehow be adapted to use Counterman's network resource management system, which is explicitly described in Counterman as the device for making “resource allocation decisions.” See, Counterman, 2:51-57. Counterman's network management system is not a chooser node, and is not even described as being a single node. Rather, the Examiner's proposed modification would in effect replace Bentall's chooser node 64 with Counterman's network resource management system, which “may be a software program or tool that manages the environment of the network.” Such a modification would deprive Bentall's system of the benefits that are explicitly described as being the result of the using chooser node 64.

A person having ordinary skill in the art would not make such a counter-productive modification, because such a modification would be against the recommendations that are counseled by the teachings of Bentall. Accordingly, Bentall itself teaches against the Examiner's proposed modification of Bentall by Counterman. At least for this reason, independent claim 1 and all claims dependent therefrom are additionally allowable under § 103(a). At least for similar reasons, independent claims 29, 57, and 85 and all claims dependent therefrom are also additionally allowable under § 103(a).

**Dependent claim 127.**

Claim 127 depends on independent claim 1 and is therefore allowable at least for the reasons discussed above. Moreover, claim 127 also includes “identifying said alternate physical path based on a list of allocated ports received from the candidate node.” These additional limitations are also absent from the cited passages.

With regard to these limitations, the Examiner points to Fig. 3, element 102 of Bentall. But the cited feature is merely a process block that states, “Continue communication using the selected alternate route.” Neither this block, nor the associated discussion in the text of Bentall, describe or fairly suggest Applicant's “list of allocated ports,” or that such a list is “received from the candidate node,” or that an alternate physical path is “based on [this] list.” At least in view of these shortcomings of the cited passages, dependent claim 127 is additionally allowable under § 103(a).

**CONCLUSION**

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance and a notice to that effect is solicited.

Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5097.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. §§ 1.16 or 1.17, be charged to deposit account 502306.

Respectfully submitted,

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